IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2103 OF 2004

Ulhas Popat Shelke ..Petitioner.

V/s.

The State of Maharashtra ..Respondent.

Shri Naveen Chomal for the Petitioner.
Shri A.S. Gadkari, APP for Respondent-State.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 08, 2004

PC :-

. Heard counsel for the parties.

. Rule. Rule made returnable forthwith. Shri Gadkari, APP waives notice for Respondent. As short question is involved, petition is taken up for final disposal forthwith, by consent.

. The main relief claimed in this petition is for direction that RCC No. 50/2001 on the file of 2nd Joint J.M.F.C, Sinner, Nashik be committed and transferred to the court of IInd Ad-hoc Addl. Sessions Judge, Nashik for being tried together with the Sessions Case No. 15/2001, being a counter case.

This prayer was made before the IInd Joint Judicial Magistrate, First Class, which came to be rejected by order dated 27th November, 2003. Against that order, the petitioner carried the matter in revision, which has also been rejected on 11.02.2004. According to the Petitioner, both the cases pertain to the same incident. However, the court below on perusing the chargesheet has observed that the incident in relation to R.C.C. No. 50/2001 took place in Kasarwadi, whereas incident in RCC No. 15/2001 took place at different place between 5 p.m. to 6 p.m.. On this reasoning, the court proceeded to reject the request made on behalf of the petitioner. However, on perusing the complaint lodged by the petitioner as well as the complaint lodged by Laxman Gangaram Jagtap, which is the subject matter of another pending case between the parties and on fair reading of both the complaints, it is more than clear that both the cases pertain to the same incident between the parties which occured on 11.02.2001. The panchanama which is placed on record at page 13, dated 11th February, 2004 reinforces the position that the place of incident was contiguous and the incident at both the place was a counter blast. In otherwords, the opinion recorded by the court below as confirmed by the revisional court,

is error apparent on the face of the record because of mis-reading of the two complaints in a hypertechnical manner. Accordingly, this petiton ought to succeed. The same is allowed in terms of prayer clause (c). Rule made absolute accordingly.

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